

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

MICHAEL LIEBAU,)	
)	
Plaintiff,)	CIVIL ACTION
)	
v.)	No. 05-1220-MLB
)	
CJ RIEG, et. al,)	
)	
Defendant.)	
_____)	

MEMORANDUM AND ORDER

This case is before the court on defendant's motions for leave to file in forma pauperis (Doc. 2) and appointment of counsel (Doc. 3). Plaintiff has alleged a violation of his Due Process rights against CJ Rieg, a former Sedgwick County Assistant District Attorney, and the Sedgwick Count District Attorney's office for malicious prosecution and prosecutorial misconduct.

This court may decline to authorize a plaintiff to proceed in forma pauperis and may dismiss any case if it determines that the case is frivolous or fails to state a claim upon which relief may be granted. 28 U.S.C. § 1915(e)(2). A complaint is frivolous when it lacks an arguable basis either in fact or law. Green v. Seymour, 59 F.3d 1073, 1077 (10th Cir. 1995). This case is both frivolous and fails to state a claim for which relief may be granted.

"[A]cts undertaken by a prosecutor in preparing for the initiation of judicial proceedings or for trial, and which occur in the course of his role as an advocate for the State, are entitled to the protections of absolute immunity." McCormick v. City of Lawrence, Kan., 99 Fed.Appx. 169, 172, No. 03-3127 (10th Cir. Apr. 26, 2004)

(quoting Kalina v. Fletcher, 522 U.S. 118, 126, 118 S.Ct. 502, 139 L.Ed.2d 471 (1997)). Plaintiff has alleged that defendants charged him with a crime in violation of state law, received confidential medical records, sought the maximum sentence and failed to advise plaintiff's wife of the sentencing hearing. (Doc. 1 at 3). Based on plaintiff's allegations, defendants are protected by absolute immunity.

Accordingly, plaintiff's application to proceed in forma pauperis is denied and this case is dismissed, with prejudice.

IT IS SO ORDERED.

Dated this 2nd day of August 2005, at Wichita, Kansas.

s/ Monti Belot

Monti L. Belot

UNITED STATES DISTRICT JUDGE